

REMARKS

Reconsideration of the application is respectfully requested.

Claims 27-78 are pending. Claims 48-54, 62-66 and 76-78 are free of prior art and will be allowable upon filing of terminal disclaimers.

Abstract has been replaced herewith to reflect the currently pending subject matter. No new matter was added.

Rejection under 35 USC Section 102

Claims 27-47, 55-61 and 67-75 are rejected as being anticipated by US Patent No. 5,211,944 to Tempesta [hereinafter "Tempesta"]. Applicants respectfully traverse the rejection.

The Examiner states that "Tempesta ... teaches the use of *proanthocyanidins*, which broadly embraces and includes the *procyanidins*" (Office Action mailed June 21, 2005, page 5) (emphasis added by Applicants). In making the above statement, the Examiner relies on the Background disclosure of Tempesta patent (paragraph bridging cols. 1-2), in which Tempesta states, *inter alia*, that compounds having chains of 5, 7, 3', 4' tetrahydroxy flavonoid 3-ol units (see formula) belong to the class of compounds known as *proanthocyanidins*.

Applicants do not disagree that the large class of *proanthocyanidins* "embraces and includes" *procyanidins*. In their response filed April 22, 2005, Applicants have explained in detail the differences in terminology between *procyanidins* and *proanthocyanidins*, and have explained that *procyanidins* are one of the many subgroups of *proanthocyanidins*.

The Examiner correctly points out that Tempesta's *proanthocyanidins* "broadly embrace[]" *procyanidins*" (emphases added), in other words *procyanidins* represent a subgenus of *proanthocyanidin* compounds. Because Tempesta does not teach or suggest that the particular subgenus of *procyanidin* compounds have biological utilities, it neither anticipates nor renders the above Applicants' claims obvious.

Applicants respectfully request that the Office applies the well established U.S. patent law that a disclosure of a large genus of compounds does not anticipate a subgenus or a species embraced by the large genus. Withdrawal of the rejection is respectfully requested.

Double Patenting Rejection

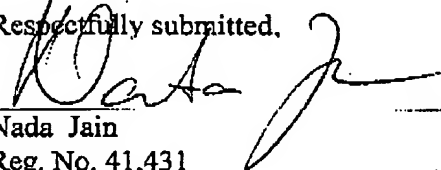
Further to the Terminal Disclaimer filed on April 22, 2005 over U.S. Pat. No. 6,479,539; Applicants will file terminal disclaimers over the patents cited by the Examiner upon finding of otherwise allowable subject matter. Claims 48-54, 62-66 and 76-78 are free of prior art and would be allowable upon filing of the above mentioned terminal disclaimers.

CONCLUSION

In view of the above remarks, Applicants believe that the application is now in condition for allowance. A notice to that effect is respectfully requested.

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Respectfully submitted,


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